

MARRIAGE BILL OF THE KINGDOM OF BHUTAN 2017

PREAMBLE

WHEREAS, the Constitution of the Kingdom of Bhutan provides all the persons with equality before law and equal and effective protection of the law without any discrimination on the grounds of race, sex, language, religion, politics or other status ;

WHEREAS, a mankind is eminent for both spiritual as well as earthly existence, the marriage is a holistic and important institution for the mankind in the earthly existence;

RECOGNIZING the need to ensure the equality among every person and to promote the marriage without any discrimination, it is expedient to harmonize and reconcile the provisions of the Marriage Act of the Kingdom of Bhutan 1980 and its following amendments with the Constitution and existing laws of the nation.

Parliament of the Kingdom of Bhutan hereby enacts as follows:

CHAPTER 1

PRELIMINARY

Title

1. This Act is the Marriage Act of the Kingdom of Bhutan 2017.

Commencement

2. This Act shall come into force on theday of themonth of thecorresponding toDay of themonth of 2017.

Extent

3. This Act Extends to whole of the Kingdom of Bhutan and also to Bhutanese citizens domiciled outside the territory of the Kingdom of Bhutan

Application

4. This Act applies to:
 - (1) all the citizens of the Kingdom of Bhutan;
 - (2) any other person domiciled in the territory to which this Act extends;
 - (3) any child, legitimate or illegitimate, both of whose parents are Bhutanese or one of whose parents is Bhutanese;

Principle

5. Every Bhutanese national and other person residing in Bhutan has the right to marry any other person irrespective of their faith, sex, status, caste, wealth or appearance, provided the persons contracting the marriage thereof have expressly consented to their marriage and shall have to abide with the provisions laid down in this Act in matters relating to marriages.

Repeal

6. This Act hereby repeals The Marriage Act of Bhutan 1980, the Marriage (Amendment) Act of Bhutan 1996, the Marriage (Amendment) Act of Bhutan 2005, the Marriage (Amendment) Act of Bhutan 2006, the Marriage (Amendment) Act of Bhutan 2009 and any provisions of law, by-laws, rules or regulations which are inconsistent with this Act.

CHAPTER TWO

PROCEDURE FOR CONTRACTING MARRIAGE

Acquiring of a marriage certificate (Nyentham)

7. Where a marriage is contracted according to the customary rites and rituals or following an engagement or a love marriage, a couple contracting marriage shall acquire Marriage Certificate from the Court. And accepting those married couple exempted by section 13 of this Act; all other couple shall only be entitled to lay claims over property on divorce if they have acquired a marriage Certificate on payment of the prescribed fine as laid down in Section 126 of this Act.

Procedure for acquiring a marriage certificate

8. A couple acquiring a Marriage Certificate shall present before the Court as sureties a male person for the bridegroom and a female person for the bride; and the Court shall obtain a document from the said sureties in the form and manner prescribed in Section 9 of this Act. Upon fulfilling the Provisions of this Act, the Court shall grant a Marriage Certificate as prescribed in the form "1" in the Schedule.

Responsibility on person standing as surety for a couple intending to marry

9. It shall be incumbent upon the person standing as surety to thoroughly enquire whether or not the intending bridegroom or bride has contracted marriage before and whether or not any provision of this Act will be contravened by contracting such a marriage. Thereafter, a declaration as prescribed in the form "2" in the Schedule shall be affixed with the signature or thumb impression and submit before the Court.

Acquiring a marriage certificate when physically unable to attend the court

10. Whereas person under unavoidable circumstances is physically unable to attend a Court for obtaining a Marriage Certificate, a couple may obtain a Marriage Certificate through the local Government authority. Accordingly, that local Government authority shall conduct an enquiry as per Section 9 of this Act and thereafter shall execute an agreement from the bridegroom and bride together with the sureties as prescribed in the form "3" in the Schedule and submit the same to the Court.

Inadmissibility

11. After obtaining marriage certificate for a valid marriage, objection from any person shall not be admissible.

Recognition of marriage

12. Irrespective of the duration of a marriage, a couple shall only be recognized as a legally married couple from the date of acquiring a Marriage Certificate from a Court.

Recognition of couple as legally married even without having a marriage certificate

13. Notwithstanding section 12 of this Act, a couple contracting marriage subsequent to the year 1963 shall have to comply with Section 7 of this Act. But a couple who have contracted marriage prior to 1963 without acquiring a Marriage Certificate shall also be recognized as legally married couple.

Invalidity of marriage contracted between blood relations

14. The persons who are consanguineous according to the varying local tradition and custom shall not contract into marriage.

Issue of marriage certificate to spouse of a person absconding from the country

15. Where a spouse of a person who has absconded the country seeks to acquire a Marriage Certificate to contract another marriage, the court may issue the Certificate. However, if that person absconding has not left the country, the issue of such a Marriage Certificate shall be kept in abeyance till the expiry of one year from the date that person has so absconded.

Age of marriage

16. The age of marriage shall be eighteen years of age for both the bride and bridegroom.

Limitation to grant of marriage certificate

17. A person shall be legally married to only one husband or wife, Marriage Certificate for contracting marriage with more than one husband or wife shall not be granted.

Marriages contracted prior to enactment of this Act

18. Notwithstanding section 17 of this Act, a person granted with more than one marriage certificate prior to enactment of this Act shall be considered as legally married couple.

Restriction on grant of marriage certificate on failure to produce deed of divorce

19. Any person seeking to acquire a Marriage Certificate from a Court for intending to contract another marriage shall not be granted if the deed of divorce executed with the former spouse is not produced before the Court.

Restriction on grant of a marriage certificate until one year from death of husband or wife

20. A person shall not be entitled to a Marriage Certificate till the expiry of one year from the date of the death of the deceased spouse.

Non-recognition of Marriage

21. If a couple marries in contravention of Section 14 to 20 of this Act shall not be recognized as a legally married couple.

Restriction on making claim on basis of a marriage certificate

22. The grant of a Marriage Certificate by a Court of law is a document to proof the legality of a marriage only, no claims on its basis for any other rights shall, therefore, be admissible.

CHAPTER THREE

MARRIAGE WITH NON-BHUTANESE

23. Where a Bhutanese citizen intending to contract marriage with a non-Bhutanese residing within the Kingdom of Bhutan approaches a Court to acquire a Marriage Certificate, the two persons who are standing sureties for the couple shall appear before the Court, one out of which shall be a Bhutanese citizen and acceptable by the Court; but both the sureties shall be well acquainted with the couple. Thereafter, the case shall be processed in accordance with section 9 of this Act.

Responsibilities of a non-Bhutanese marrying a Bhutanese

Religion of a non-Bhutanese marrying a Bhutanese

24. Except for a Bhutanese citizen married to a non-Bhutanese domiciled outside the Kingdom of Bhutan, a non-Bhutanese married to a Bhutanese citizen domiciled in the kingdom of Bhutan shall have the right to freedom of religion, however, shall be prohibited from propagating or introducing any new religion against the spiritual heritage of the country.

Adoption of customs and complying with laws of the government by a non-Bhutanese married to a Bhutanese if domiciled in Bhutan

25. A non-Bhutanese married to a Bhutanese citizen, if domiciled within the Kingdom of Bhutan and whether or not that person acquires a Bhutanese citizenship shall have to adopt the tradition and custom and comply with the laws of the country and any other Laws made by Parliament from time to time.

A non-Bhutanese married to a Bhutanese to abide with Marriage Act

26. A non-Bhutanese married to a Bhutanese citizen and whether or not that person has acquired a Bhutanese citizenship shall in processing any matters relating to marriage, comply with the provisions of this Act.

Adoption of social traditions and customs and abiding with citizenship Act by one marrying Bhutanese citizen

27. Where a non-Bhutanese marries a Bhutanese citizen and intends to acquire a Bhutanese citizenship or to take up domicile in the Kingdom of Bhutan, the person shall adopt the tradition and custom of the country in accordance with the Citizenship Act of Bhutan and any other Laws made by Parliament from time to time.

Rules to be complied with by one marrying a Bhutanese

28. Any Bhutanese marrying a non-Bhutanese, irrespective of whether or not that non-Bhutanese acquires a Bhutanese citizenship shall have to comply with sections 29 to 33 of this Act.

Restriction on a person marrying a non-Bhutanese

Promotions for government employee

29. Any Bhutanese national in Government service marrying a non-Bhutanese shall remain in the same rank as on the 11th June, 1977 or on the day of the marriage with a non-Bhutanese held by the person and shall not be entitled to any further promotions. And such a person shall be restricted from holding any appointment above the rank of a Junior Rabjam.

Being made a person of higher position

30. Any Bhutanese national marrying a non-Bhutanese shall remain in the same position in society as on 11th June, 1977 or prior to his or her marriage with a non-Bhutanese; and from the date of the marriage with a non-Bhutanese or after 11th June, 1977, such a person shall not be given a higher position.

Employment in foreign Affair, Defence Service and as Member of Parliament

31. If any Bhutanese national employed in the defense or Foreign Affair or in Parliament as a Member, of the Government of Bhutan marries a non-Bhutanese, that Bhutanese national shall be discharged from the said department. And any Bhutanese national married to a non-Bhutanese shall not be offered employment those institution.

Restricted from Privileges as given to other citizens

32. Any Bhutanese marrying a non-Bhutanese shall be restricted from enjoying the following privileges:
- a) Allotment of land; and,
 - b) Medical treatment in foreign countries.

Privileges of studies and training

33. Any Bhutanese citizen receiving training or education under Government sponsorship if married to a non-Bhutanese shall be restricted from enjoying the privilege and benefit as mentioned herein below:
- a) from receiving any aid from the government to pursue or undergo training in foreign countries;
 - b) The Government aided expenses given for studies and training shall be withdrawn forthwith.
 - c) The expenditure given by the government for pursuing studies or undergoing training up till date of such a marriage shall have to be refunded.
 - d) The Government of Bhutan shall send intimation to the country sponsoring the student to withdraw all the expenses provided for studies or training to a Bhutanese national whose marriage is contracted with a non-Bhutanese.

CHAPTER FOUR

COMPENSATION (GAO) FOR ADULTERY

Claims of compensation

34. If any person commits adultery with a married person, the defaulter shall pay compensation to the aggrieved spouse at the national daily wage rate, calculated in accordance with Chatrim for national wage rate, for:
- a) three months, if the duration of marriage does not exceed three years;
 - b) five months, if the duration of marriage does not exceed seven years; or
 - c) Seven months, if the duration of marriage exceeds seven years.

Compensation payable to the spouse

35. Any married person shall be entitled to equal compensation for adultery.

Compensation payable on return of person enticing a married person

36. If a married person elopes with another person and whether the eloped spouse returns or not, that other person when he or she returns shall pay the compensation to the spouse of the person who eloped, if present in person, whether he or she is married subsequently. If the spouse of the person who eloped is not present and there is a prior submission to the court relating to the matter, the court shall receive the compensation and give it to the spouse of the person who eloped or a person from the same household.

Compensation and fines payable on concealing fact of marriage

37. If the married person deceives that the person is not married and commits adultery with another married person and proof for such commission is clearly attributable to that person, the person shall pay the compensation to the spouse.

Compensation and other cost payable when couple connives to commit adultery

38. If there is an issue between a couple after they connives to commit adultery by deceiving the marriage for material gain, the couple shall be entitled to compensation and if there is proof regarding the connivances, after realizing compensation, the couple shall divorce. Upon divorce, apart from the normal cost, that couple shall not be entitled to claims of any separation costs from each other.

Confession of adultery in absence of a witness

39. If there is no witness to confirm an act of adultery of a married person, and if the party who committed adultery accepts the commission of an act, from the day the compensation is paid, the party who defaulted shall give deed of divorce and the separation cost shall be processed.

No offence without sufficient evidence

40. An act shall not be considered offence of adultery for mere suspicion on eyeing each other, conversing, holding hands, or eating and drinking together unless the person

who committed adultery with the married person accepts or the time and place of such commission is clearly furnished.

Non-entitlement to claim compensation

41. Any couple without a Marriage Certificate or not married in accordance with section 125 or a couple not recognized as a legally married or person who has exchanged deed of divorce shall not be entitled to claim any compensation for adultery.

Non-entitlement of compensation for adultery by the remaining spouse after one year

42. Excepting official purpose, if a spouse lives apart without looking after the welfare of the family exceeding one year, that person shall not be entitled to compensation in the event the remaining spouse commits adultery or remarries.

Entitlement of compensation for adultery by the spouse living apart

43. Excepting official purpose, a spouse living apart from the family exceeding one year, the remaining spouse shall be entitled to compensation for adultery by the spouse who lives apart if he or she has been faithful to the spouse living apart.

Claim of compensation by the absconder on return

44. If a married person absconds to another country for an act of treason or attempted crime and returns to the country, that person shall not be entitled to compensation from the remaining spouse even if he or she has committed adultery or contracted new marriage.

Non-entitlement to compensation on taking up a life of a religious celibate

45. A person shall not be entitled to receive any compensation from the day the person takes up a life of a religious celibate.

Realization of compensation for adultery admissible only if defaulter has confessed to guilt while spouse was still alive

46. Compensation of adultery may only be raised if the adulterer has accepted guilt in the presence of the person entitled to compensation or while alive, in issue arising subsequent to that person having absconded or deceased.

Non-realization of compensation by relatives

47. No compensation shall be claimed by the relatives or family members in absence of the person entitled to compensation.

Non-realization of compensation from relatives in absence of the offender

48. Unless the person who committed adultery with the married man or woman arrives, no compensation shall be claimed from the relatives or family members of the adulterer. If the case is submitted to the court before the death of the adulterer and even if he or she has admitted the guilt, no compensation shall be claimed from relatives or family members of adulterer after his or her death.

Entitlement of compensation to relatives

49. Where a married person has eloped with another person and the remaining spouse has submitted the matter to the court before the person's death, the relatives of the deceased shall be entitled to claim compensation from the person who eloped with the married person.

Non-realization of compensation after third offence of adultery

50. If any married person in a same marriage commits adultery and his or her spouse realizes compensation for three times, thereafter no further compensation shall be entitled in case of further adultery.

Non-realization of compensation by fourth husband or wife

51. If any married person changes the spouse and from each marriage the person so lets the other spouse to be paid compensation for three times because of his or her adultery, the new spouse from further marriage contracted and committed adultery thereafter shall not be entitled to claim compensation.

Non-realization of compensation for adultery discovered after divorce has been granted

52. No compensation shall be entitled for the adultery committed during the subsistence of the marriage if it comes to the knowledge of either of the spouse only after having exchanged the deed of divorce.

Non-realization of compensation after third offence of adultery even if one of the claims has been forgone

53. No compensation shall be entitled after three offences of adultery even if the payment of compensation by the adulterer is waived.

Restriction on claiming compensation by person in prison for act of treason against country

54. If the spouse is imprisoned for an act of treason, from the day he or she was imprisoned, he or she shall not be entitled to claim compensation for the adultery his or her spouse commits.

Realization of compensation if a person commits adultery or elopes within three years of his or her spouse being in prison

55. If the person is imprisoned for offences other than treason and within three years of his or her imprisonment the spouse commits adultery, that person shall be entitled to compensation. However, if the person is imprisoned for three or more years, that person shall not be entitled to compensation if the spouse commits adultery.

Compensation payable for attempted adultery

56. If a person attempts to commit adultery with another person, then even if there is no actual commission, that person shall pay half the amount of the compensation.

Compensation payable for adultery involving a religious celibate

57. Unless the compensation is processed before the court of law, no party shall settle the matter where any celibate commits adultery with a married person. If it is settled within the party, the celibate shall also pay double the amount of compensation to the government and compensation shall not be entitled to the other spouse.

Punishment for adultery committed by a religious celibate

58. In a case where celibate and the married person involve in adultery, the court shall punish for non-compoundable offence with six months of imprisonment to both the parties.

CHAPTER FIVE

DAMAGES (*LOGJYEL*) PAYABLE FOR COMMITTING ADULTERY AND MARRYING HIM OR HER

Realization of Damages

59. Where a person commits adultery with a married person and subsequently marries that person, the co-respondent in adultery marrying that person, shall pay damages to the aggrieved person at the national daily wage rate, calculated in accordance with Chathrim for the national wage rate for;

- a) three months, if the duration of the marriage does not exceed three years;
- b) five months, if the duration of the marriage does not exceed seven years; or
- c) seven months, the if the duration of the marriage exceeds seven years.

Payment of damages on return of a person enticing another person's spouse irrespective of remaining spouse's remarriage

60. Any person who returns subsequent to enticing the husband or wife of a person shall pay the damages to the aggrieved spouse, irrespective of whether that married person

returns or not and whether the aggrieved spouse has contracted another marriage or not.

Payment of damages on return of a person eloping with another's spouse even if former spouse remarries

61. Any person who returns subsequent to elopement with a married person shall pay the damages to the aggrieved spouse, irrespective of whether that married person returns or not and whether the aggrieved spouse has contracted another marriage or not.

Payment of damages to relatives of deceased if a suit of elopement or enticement of a person's spouse filed in court prior to the person's death

62. If the spouse prior to death has filed an elopement or enticement suit of husband or wife with a third person, then even if that spouse dies, the damages so realized shall be paid to his family members.

No damages without suit filed in court and damages if suit filed but no relatives prior to death of spouse

63. In cases of elopement, if either the husband or wife staying at home dies without filing a suit in a Court, then even if the person who has enticed the said spouse of the deceased husband or wife returns, no person may realize any damages from that person. But if a suit has been filed in a Court and the husband or wife staying at home dies and if there are no joint family members also, then the amount of damages so realized shall be given to the person who performed the last rites for the deceased husband or wife.

Restriction on claiming any damages until return of the person enticing wife or husband

64. Until the return of the person enticing or eloping with spouse of another person, nothing of any value shall be realized in the form of damages from the household members of that person.

Damages from family or relatives of the deceased

65. Notwithstanding a suit having been filed in a Court prior to the death of a person who had enticed the husband or wife, no damages shall be realized from the household members and relatives of that deceased person.

Damages by a person absent from home for over a year if his or her spouse at home remarries

66. If a person has been absent from home for over a year and neglects his or her spouse at home, then in the event of that spouse at home contracting another marriage, that person shall not be entitled to realize any damages whatsoever, even if that person had remained faithful to his or her spouse at home.

Damages by spouse at home if person absent from home for over a year contracts another marriage

67. If a person has been absent from home for over a year and if that person contracts another marriage, then his or her spouse staying at home shall be entitled to realize damages, provided that the said spouse has remained faithful to that person absent from home.

Damages by a person if already realized thrice

68. No further damages shall be entitled to a person, if the person has already realized three such damages.

Damages after the third time even if one of the claims are forgone

69. If a person due to his or her depraved character has contracted several marriages and if three amounts of damages have been realized for three such incidents because of that person's depravity, including the forgoing of claims on any one of such damages by the husband or wife for such marriages, then no further damages may be claimed.

Damages by a person serving prison term

70. Where a person is serving a term of imprisonment and has been in prison for over three years for committing a crime, and if that person's spouse at home contracts another marriage after acquiring a deed of divorce from a Court, then that person still in prison shall not be entitled to realize any damages. But where that person's spouse at home contracts another marriage within three years of that person being sentenced to a term of imprisonment, then on the release of that person from prison, he or she may realize the damages, provided that he or she had not been involved in any act of treason against the country.

Damages if spouse of an absconder remarries

71. In a case where the spouse of an absconder fleeing away after committing an act of treason against the country or violating the law contracts another marriage, then no amount of damages shall be realized.

C H A P T E R S I X

SEPARATION COST (*DROK ZHEN PAI ZHEN THUE*) ON DIVORCE OF A COUPLE

Settlement of separation costs

72. Any spouse who is seeking divorce, shall pay separation cost to his or her spouse at the national daily wage rate, calculated in accordance with Chathrim for the national wage rate, for ;
- a) three months, if the duration of the marriage does not exceed three years;
 - b) five months, if the duration of the marriage does not exceed seven years; or
 - c) seven months, if the duration of the marriage exceeds seven years.

Settlement of separation cost on person's elopement to spouse remaining at home

73. If any person who has eloped returns, then whether or not that third person enticing the person returns, and even if the former spouse contracts another marriage, that person shall pay the separation cost. However, where a suit has been filed in the court for such elopement then even if the former spouse expires, the stipulated separation cost shall be realized by the court and made over to the household member of the deceased; and if there is no such person then the said amount shall be paid to person who had performed the last rites of the deceased.

Realization of separation costs from parents

74. Where dissolution of a marriage has been on the grounds of either the spouse's parent or guardian being not reconciled to the couple's marriage, then the separation cost payable shall be paid by either the said parent or guardian whoever has caused the divorce.

Separation cost payable on divorce of a person taking up a life of a religious celibate

75. No person shall realize any separation cost from a spouse who has sought divorce on taking up a life of a religious celibate. But if subsequent to such a divorce, that spouse either fails to attain a life of a religious celibate or prior to the expiry of three years from taking up a religious life, he or she instead establishes another family, then whether or not his or her former divorced spouse has contracted another marriage, the person who had sought the divorce on taking up a life of a religious celibate shall pay separation cost; and in addition shall be punished with a term of imprisonment extending from three months to six months.

Non-realization of separation cost by a person absent from home for over a year if deed of divorce acquired by spouse at home

76. If any person has been living apart from household family members for more than a year and if the person's spouse staying at home acquires a deed of divorce from a Court, then on the return of that person away from home, the realization of the separation cost from the said spouse shall not be admissible. But where a deed of divorce has been acquired by that person living apart from household family members, notwithstanding that person being restricted from acquiring such a deed, then that person shall only be exempted from paying the separation cost if evidence can be furnished of the perfidious behavior on the part of the person's spouse at home towards that person; but where no such evidence is forthcoming, the separation costs shall have to be paid.

Separation cost and fine payable for divorce by fraud

77. If any person intending to leave his or her spouse connives in collusion with another person and makes them commit adultery with his or her spouse and if a proof is furnished of such fraudulent collusion, then that person shall pay the separation cost. In addition, the person shall be punished with a fine at national daily wage rate calculated in accordance with Chathrim for the national wage rate for three to six months.

Separation cost payable by party seeking divorce on grounds of sterility, impotence or in-consummation of marriage

78. Where a divorce has been granted on the grounds of sterility or impotence or in-consummation of marriage, then the said party acquiring a deed of divorce from a Court shall pay the separation cost.

Separation cost payable to a person serving a prison term

79. Any person who is in prison and has served a term of sentence for over three years shall not be entitled to claim any separation cost if the person's spouse at home contracts another marriage. However, if such a marriage is contracted during the person's prison term which had not exceeded three years then in such a case, the realization of separation cost shall be kept in abeyance until that person is released from prison for an offence other than an act of treason against the country, and on release from prison the separation cost shall be realized.

Separation costs payable by party desiring divorce on grounds of incompatibility

80. Where a divorce is sought on the grounds of incompatibility without any guilt of adultery from either of the spouse, then the person who had desired the divorce shall pay the separation cost.

Separation costs payable by person committing cruelty

81. Where a divorce is sought on the grounds of a person's cruelty on spouse or relatives of the spouse, the defaulter shall pay the separation cost.

Separation costs payable by party seeking divorce on grounds of abandonment

82. Where a divorce is sought on the grounds of negligence by either of the spouse, the person seeking the divorce shall pay the separation cost.

CHAPTER SEVEN DEED OF DIVORCE (*YIKTHI*) ON OBTAINING DIVORCE

Exchange of deed of divorce

83. Where a divorce is sought, the couple shall exchange deed of divorce.

Amount payable when exchanging deed of divorce

84. Where a divorce is sought by a couple, irrespective of child in between, reliability and duration of the marriage, the couple shall exchange deed of divorce; and the defaulter shall pay a sum at national daily wage rate calculated in accordance with Chathrim for the national wage rate for 15 days.

Restriction on exchanging deed of divorce by unauthorized person

85. Where a spouse is unable to be present for exchanging a deed of divorce, and in consequence any third person or any member of the joint family is duly authorized and deputed thereof, then that person shall be permitted to execute the exchange of the deed of divorce on behalf of that absent spouse and no other person shall be entitled to exchange deed of divorce.

Conditions for the deed of divorce

86. The following conditions shall be prescribed in the deed of divorce:
- a) Where a person seek to contract another marriage, the former spouse shall not raise any dispute;
 - b) The settling of property shall be processed in accordance with the Inheritance Act of Bhutan;
 - c) Where a divorce is sought on the grounds of suspicion of marriage on either of the spouse with a third person then such third person shall be clearly named in the agreement and a condition laid down to strictly prohibit a marriage from taking place instead of other person to restrain from holding talk, making cordial relations or meeting;

- d) The wife shall affix stamp on the deed to be given to the husband and by the husband on the deed to be given to the wife in accordance with the affixation rules of legal stamp, alongwith the signatures of the parties and witness.

Penalty on contravening the lawful conditions of the deed of divorce

87. Where a deed of divorce is exchanged in contravention to section 86 of this Act, the defaulter shall be punished with imprisonment extending from one to six months or National Daily Wage rate calculated there to and the person writing the agreement shall be punished with a term of imprisonment or fine extending to half the term or amount imposed on the defaulter.

Property Settlement after exchange of deed of divorce

88. Once the deed of divorce is exchanged, the property settlement shall be in accordance with the conditions laid down in the deed of divorce and any omitted particulars shall be retained by the party having its possession and no person shall raise any objection.

Penalty on contravening conditions laid down in deed of divorce

89. Once the deed of divorce and the written agreement is exchanged, any person contravening the conditions laid down there in shall bear the penalty declared under an indemnity given in the agreement thereof.

Grant of deed of divorce on the grounds of battery

90. Where a couple uses physical force, misbehaves, abuses or cause apprehension of bodily injury to each other or their relatives and then seeks for deed of divorce, the Court shall grant the deed of divorce and the defaulter shall pay the separation cost.

Grant of deed of divorce to spouse of a person absent from home for over a year

91. Where a person has been away from home for more than a year and neglects the spouse, and if the spouse at home seeks deed of divorce, the Court shall grant the deed of divorce.

Grant of deed of divorce to spouse of an absconder

92. From the day an absconder flees the country and if the absconder's spouse seeks deed of divorce, the Court shall grant the deed of divorce. Where the absconder returns to the country, the separation cost shall be realized in accordance with section 76 of this Act.

Grant of deed of divorce on grounds of sterility, impotence or in-consummation of a marriage

93. Where a divorce is sought on the grounds of spouse's sterility or impotency or in-consummation of a marriage and if the Court on enquiry finds that the grounds submitted thereof are true, a deed of divorce may be granted and the separation cost shall be realized in accordance with this Act.

Grant of deed of divorce to a spouse of a person who has served imprisonment for three or more years

94. Where a spouse of a person serving a term of imprisonment for three or more years seeks deed of divorce, the court may grant the deed of divorce and the separation cost shall be realized in accordance with Section 79 of this Act.

Grant of deed of divorce if couple neglects each other

95. Where a divorce sought on the ground of negligence by one of the spouse, the Court shall grant a deed of divorce and the person seeking the divorce shall pay the separation cost.

Declaration of divorce from the day absconder flees the country on committing an act of treason against the country even if deed of divorce not acquired

96. Where a person flees the country after committing an act of treason against the country, then from the date that absconder has so fled away, the person's spouse at home shall be deemed to have been divorced, whether or not a deed of divorce has been acquired from a Court. Where the person has not fled the country, the separation cost shall be realized in accordance with section 76 of this Act.

Consideration of divorce irrespective of grant of deed of divorce on taking the vows of celibacy

97. A couple irrespective of whether they are granted the deed of divorce shall be considered separated from the day they receive the vows of celibacy and the separation cost shall be realized in accordance with section 75 of this Act

Restriction on granting deed of divorce without having a Marriage Certificate

98. A couple having no Marriage Certificate shall be debarred from a grant of a deed of divorce from a court irrespective of the cause of divorce.

CHAPTER EIGHT

CUSTODY OF CHILDREN AND CHILD SUPPORT ALLOWANCE (SOTHUE) AND SETTLEMENT OF JOINT EXPENSES AND ALIMONY (ZEY-TSI) ON DIVORCE

Rights of custody of child on divorce

99. Where a divorce is granted to a couple having child, the child aged nine years and above shall have the rights to choose whether they wish to live with the father or the mother.

Rights of mother over custody of children below nine years

100. Where a divorce is granted to a couple having child, the child under the age of 9 years shall remain under the custody of the mother unless the court finds compelling reasons to give the custody to the father or to a third person or recognized organization established under Child Adoption Act of Bhutan in the best interest of the child in absence of the father. The Compelling reasons by which a mother can be deprived of custody include:

- a) Negligence;
- b) Abandonment;
- c) Unemployment;
- d) Immorality;
- e) habitual drunkenness;
- f) drug addiction;
- g) maltreatment of the child;
- h) Insanity;
- i) Affliction with communicable illness; and
- j) Any other ground that the court determines.

Entitlement of child support allowance if divorce is caused by husband

101. Where a divorce is granted on the grounds caused by husband and the child lives with the mother, unless there is a settlement agreement, the father shall pay a sum in cash amounting to twenty percent of his monthly income per month to each child as child support allowance. However irrespective of the number of child, the total child support allowance shall not exceed forty percent of his monthly income. The payment of the child support allowance may be made either monthly or quarterly or once a year in lump sum, depending upon his convenience, until the child attains eighteen years of age or until nine years of age if the child decides to live with the father after attaining 9 years of age. The court shall govern the payment of such allowances.

Entitlement of child support allowance if divorce is caused by wife

102. Where a divorce is granted on the grounds caused by wife and the child lives with the mother, both the parents shall pay ten percent of the monthly income as child support allowance to each child till the child attains 18 years of age and only the mother shall pay the allowance if the child decides to live with the father after attaining nine years of age. Where the mother expires prior to the child attaining nine years, father shall take over the custody of such child or give to a third person or recognized organization established under Child Adoption Act of Bhutan in the best interest of the child in absence of the father and the allowance shall be paid to the person or organization who looks after the child.

Income for the purpose of Child Support Allowance

103. Income shall mean:

- a) net salary in the case of employees;
- b) net income from ownership of property or farm or business;
- c) net income from dividends of stocks or shares; or
- d) Any income earning not included above.

104. In absence of the net income, calculation shall be based on daily wage rate and where a verdict has been passed by a court for the payment of Child Support Allowance, no new case shall be registered, however, orders may issued based on that verdict in the event where income of either parent paying the allowance varies and appeals to the court to change the amount of allowance.

Restriction on verifying expenditure for child support allowance

105. Child support allowance shall be given without any objection or restriction. The person who receives shall ensure to spend child support allowance judiciously.

Settlement of expense for marriage

106. Where a divorce is sought within three years of the marriage on the grounds caused by one of the spouse, the costs incurred for the marriage shall be borne by the defaulting spouse. However, the claims for such expenditure shall not exceed twenty percent of the defaulter's annual income. Where a divorce is sought after three years of the marriage, neither of the spouses shall be liable to pay such cost.

Realization of expenses on each other on divorce

107. where a couple with or without children are granted a divorce, notwithstanding the duration of their marriage, the settlement of the expenses incurred for their individual benefits when living together or the amounts jointly expended or the amounts given to each other or to their respective relative on their own express consent or the amount expended for their individual personal work or any other

expenses shall be processed in accordance with provisions of Inheritance Act of Bhutan.

Settlement of cost to be made according to prescribed law

108. Where a couple has been granted a divorce, irrespective of whether they possess Marriage Certificate or not, the settlement of any costs, shall be in accordance with the provisions of this Act.

CHAPTER NINE

ENTICEMENT BY FRAUD (*LUTHRI GUKOR*), RAPE OF MINOR (*MAMINPER CHOEPA*), FORCIBLE RAPE (*WANGTSEKHI CHOEPA*) AND CONTRAVENTION OF MARRIAGE LAW

Compensation for mother of an illegitimate child

109. Where a suit has been filed in a court of an unmarried woman being impregnated and if the suit succeeds, the defaulter shall pay an amount equal to the national daily wage for ten months calculated in accordance with the chathrim for national wage rate for the medical expense. The father of the child born out of wedlock shall pay child support allowance.

Liability of expense on death of an illegitimate child's mother

110. Where a mother of the illegitimate child dies giving birth to that child, penalty shall be in accordance with the Penal Code of Bhutan in case of accidental death and give the realization whatsoever made to either the parent or the household member of the deceased.

Responsibility for the upbringing of the illegitimate child of the deceased mother

111. Subsequent to the death of the mother of illegitimate child and where there are relative of the deceased for the upbringing of that child, it shall be incumbent upon the father for the upbringing of the said child. And in absence of the father, the child may be given to a third person or recognized organization established under Child Adoption Act of Bhutan or any other existing laws in the best interest of the child.

Penalty for cohabitation by deceiving to marry

112. Where a person cohabits with another person with the promise of marrying but subsequently deserts without having acquired a Marriage Certificate, after paying the stipulated fine all such settlements consequent to the divorce shall be made as per law. In addition, the person who had deceived shall be punished in accordance with provisions of the Penal Code of Bhutan.

Punishment for procuring a married person with intent to commit adultery

113. If any person causes a married person to be procured and commits adultery with that person the defaulter shall pay the compensation as per law to the spouse of that person; and the procurer shall be punished with a fine amounting to half the compensation imposed on that offender. However, if the said procurer himself or herself had also committed adultery with that married person, then he or she shall pay the full amount of the compensation and in addition a fine amounting to half the amount of the fines so imposed.

Penalty for causing rift between married couples by making false allegations

114. If a person causes a dispute between a couple who are innocent of committing any offence, by false allegation of adultery on the part of either of the spouse to cause a divorce between them, then defaulter shall be dealt in accordance with the Penal Code of Bhutan.

Penalty for injury of a married person having illicit relations

115. If a married person who had consented to have illicit relations with one or more persons is injured during the act, a report shall be submitted to the Court of competent jurisdiction or Royal Bhutan Police or Gewog or Thromde authority within 24 hours of the incident, excluding the time taken for making the journey to submit the report, and the person who procures the married person and each of those involved in the act shall be guilty of gang rape and shall be dealt in accordance with the Penal Code of Bhutan. The person who procures the married person shall be charged with deception in accordance with the Penal Code of Bhutan. The procurer and the members of the group shall pay compensation to the victim.

Penalty in the event of death of the married person having illicit relations

116. In the event of death of the married person having illicit relations, the person who had procured the person and other person involved in the act shall be liable for culpable homicide in accordance with the Penal Code of Bhutan and shall bear all the expenses for the funeral rites for that person.

Penalty for realizing an amount in excess to that prescribed by law

117. Where a case has been settled through Nangkha-Nangdri realizing a sum less than that stipulated under this Act, then such a compromise shall be valid. However, realization of an amount exceeding the stipulated amount prescribed by Law shall be strictly prohibited and in contravention of which, the amount so realized in excess shall be returned to the person from whom such realizations were made and the balance amount which was permissible for realization shall be confiscated by the Government.

Penalties when a written agreement or an oral settlement is executed for realizing excess amount than prescribed by law

118. If a person executes a written agreement or makes an oral settlement for realization of an amount in excess of the prescribed sum, the person executing the written agreement or making the oral settlement and witnesses thereto and the sureties shall be punished with fine equivalent to half the excess amount of the stipulated sum so realized.

Penalty for contravening provisions of this Act

119. If a person executes a written agreement or makes an oral settlement in contravention of this Act for realization of the prescribed amounts, then whatever amount have been so realized shall be returned to the said person from whom such realization were made, and the said person who had realized such an amount shall pay a fine to the Government equal in amount to the sum so realized. In contravention of which, the said person shall be punished for petty misdemeanour and the person executing the written agreement or making the oral settlement and witnesses thereto shall be punished with a fine or imprisonment equal to half the amount or imprisonment imposed on the said person who had realized the amount.

Penalty if a person provokes his or her spouse's concubine or paramour

120. Where a person alleges his or her partner having illicit relation with another person and takes possession of property of that illicit partner or engages in battering and cause physical damage, the person shall be guilty of extraction and battering of the other person on separate accounts and shall be punished in accordance with the Penal Code of Bhutan and Domestic Violence Prevention Act of Bhutan.

Penalty for performing child marriages

121. Where a child marriage is performed and there is realization of expenses incurred for performing the marriage and exchanges of any properties, the person who has given such properties shall be returned, and the parent or guardian performing child marriage shall be punished with a fine at national daily wage rate of three months to one year calculated in accordance with the Chhatrim for National Wage rate.

Penalty for committing an obscene act in a public place

122. Where a person witnesses an obscene act being committed by a married couple or any other couple in a public place or in a place open to view, the defaulting couple shall be punished in accordance with the Penal Code of Bhutan.

Restriction on claiming expense except for claiming compensation or damages

123. Where a person outrage the modesty of a married person or has illicit relations with that person or had enticed the person away, the spouse of that person shall only realize the stipulated compensation and damages from the defaulter, and shall not include the claims for expenses incurred while they stayed together. In contravention of which, the case shall be processed in accordance with Section 119 of this Act.

Penalty prescribed by law even in absence of a Marriage Certificate

124. Where a divorce is sought by a couple without a Marriage Certificate, no realization of any kind of penalty shall be admissible until fulfilling the condition provided in Section 125 of this Act. However, paying fines and damages shall be in accordance with the provisions of Chapter Seven and Eight of this Act.

CHAPTER TEN

MISCELLANEOUS PROVISIONS

Procedures for divorce without a marriage certificate

125. Where a couple without a marriage certificate intends to seek divorce, the couple shall submit an application to the Court and the settlement of the properties and other settlements shall be undertaken after paying the fines stipulated as following :

- a) a fine of national daily wage for two months calculated in accordance to Chhatrim for Wage Rate, for a marriage within three years;
- b) a fine of National daily wage for four months calculated in accordance with Chhatrim for wage rate, for a marriage within seven years; and
- c) a fine of national daily wage for six months calculated in accordance to Chhatrim for wage rate, for a marriage exceeding seven years.

Imposition of fine on person not possessing marriage certificates

126. The fine payable in section 125 of this Act shall be paid jointly, however, where a proof is furnished that either of the spouse had refused to acquire a Marriage Certificate or if any other third person had given advice against acquiring a Marriage Certificate, the stipulated fine shall be paid by the person who had refused or had given advice against acquiring such a certificate.

Penalty if divorce without Marriage Certificate is settled outside the Court

127. Where a divorce is settled for a couple without a marriage certificate outside of the court, the property so settled shall be confiscated by the Court and a fine equivalent to the value of such property shall be paid equally by the couple and the person settling such a divorce or any person who has acted as the mediator or

witnesses in such settlements, whatever the case may be, shall be punished with a fine equal in amount to that paid by that husband and wife.

Determination of duration of a couple without marriage certificate

128. The duration of a couple without a Marriage Certificate shall be determined by presenting before a Court a statement by the Local Government authority or a joint statement of three competent witnesses.

Restrictions on the types of marriage settlement transaction after the payment of fines

129. Marriage settlement shall not be allowed even after paying fine for the marriage restricted by this Act and the marriage without a marriage certificate.

Re -imposition of fine wherein marriage certificates are not acquired

130. Unless the couple is separated after the grant of deed of divorce and the payment of fine, otherwise where the couple continues to live together, the couple shall acquire a marriage certificate, contravening which the similar fine shall be imposed if separated in the future.

Transaction of marriage settlement as per Inheritance Act in absence of a marriage certificate

131. In the event of the death of one of the parent who does not possess marriage certificate, the spouse and the children of the deceased shall settle the property in accordance with the Inheritance Act of Bhutan.

Permission to pay cash or kind on divorce

132. Where it is not possible to pay the compensation, damages and separation costs and any other cost in cash, the equivalent payment may be made in kind.

CHAPTER ELEVEN

DEFINITIONS

133. For the purpose of this Act:
- (1) **‘Adultery’** means a sexual intercourse with a person who is and whom he or she knows or has reason to believe to be the spouse of another person
 - (2) **‘Amount payable with deed of divorce (YIK-TEN)’** means an amount payable by defaulting spouse while exchanging deed of divorce when a divorce is being sought from the court.

- (3) **‘Blood relations (NGOTSA-PHOKMI)’** means Persons of close consanguinity and affinity, who are restricted from marrying one another.
- (4) **‘Child marriage’** means marriage performed between the persons below the age of eighteen.
- (5) **‘Child Support Allowance (SOTHUE)’** means allowance given to a child for the maintenance until the attainment of 18 years of age.
- (6) **‘Compensation (GAW)’** means the amounts payable by a defaulter when committing adultery with another's spouse.
- (7) **‘Cruelty’** means a conduct by one spouse that endangers life, person or health of the other spouse, or creates a reasonable apprehension of bodily or mental harm. It includes personal violence and physical, sexual, emotional or economic abuse.
- (8) **‘Damages (LOGJYEL)’** means the amount payable by a defaulter to the spouse of the person, with whom the offender elopes and marries.
- (9) **‘Deed of divorce (YIK-THI)’** means a deed granted by court of law during divorce.
- (10) **‘Joint Expenses and Alimony (ZEY-TSI)’** means the settlement of any expenses in general or related to marriage between husband and wife.
- (11) **‘Illegitimate child’** means a child who is not born out of a lawful marriage
- (12) **‘Marriage Certificate (NYEN-THAM)’** means a certificate granted by the court to a couple recognizing them as a married couple.
- (13) **‘Nangkha-Nangdri’** means the settling of dispute out of the jurisdiction of the court by a mediator or arbitrator.
- (14) **‘Separation cost (DROK ZHENPAI ZHENTHUE)’** means a cost payable by the leaving spouse to the remaining spouse upon divorce.
- (15) **‘Unavoidable circumstances’** means circumstances where a person cannot be present before the court to acquire a marriage certificate or a deed of divorce due to physical or mental illness.